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7 Avid Life Media, Inc. and Avid Dating  
Life, Inc. dba Ashley Madison

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10  
11 AVID LIFE MEDIA, INC., *et al.*

Case No. 12-CV-08602-JAK (FMOx)

12 Plaintiffs,  
13 vs.  
14 DIGISEC MEDIA AS dba  
15 www.victoriamilan.com, *et al.*

**RESPONSE TO DEFENDANTS'  
NOTICE OF RELATED CASE**

16 Defendants.  
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1           **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF  
2 RECORD:**

3           Pursuant to Local Rule 83-1.3.1, Plaintiffs Avid Life Media, Inc. and Avid  
4 Dating Life, Inc. dba Ashley Madison (“Plaintiffs” or “Avid”) submit this Response to  
5 Defendants Digisec Media AS’s and Sigurd Vedral’s (collectively, “Defendants”)  
6 Notice of Related Case, which was filed on April 23, 2013. (Docket Entry (“DE”) 14.)

7           Pursuant to Local Rule 83-1.3.1(d), where two actions are based upon the same  
8 trademark, they are related only if “one of the factors identified in a, b or c is present.”  
9 Local Rule 83-1.3.1(d)(emphasis added). Defendants invoke Local Rule 83-1.3.1(d)  
10 because this action involves the same trade dress as alleged in the action styled *Avid*  
11 *Life Media, Inc., et al. v. Marital Affair Ltd., et al.*, Case No. 2:12-cv-07604-MMM-  
12 MANx (“Global Personals Action”), but have not established that one of the factors  
13 identified in a, b, or c is present.

14           Specifically, Defendants assert that the two actions will both require a  
15 determination of “substantially related or similar questions of law and fact” in support  
16 of finding the matters related under Local Rule 83-1.3.1(b). Nevertheless, the  
17 “substantially related or similar questions” that Defendants set forth to meet subsection  
18 (b) relate to the ownership of the trademark and likely confusion, which are the precise  
19 questions that always must be asked in every action where a trademark is at issue. If a  
20 litigant could meet the requirements of Local Rule 83-1.3.1(d) merely by repeating the  
21 precise issues raised in all trademark infringement actions—i.e., ownership of the mark  
22 and likely confusion, then that portion of subsection (d) requiring the existence of “one  
23 of the factors identified in a, b, or c” would be meaningless.

24           As it stands, the Global Personals Action involves the same trade dress at issue  
25 in this action, but the Global Personals Action also involves a trademark infringement  
26 claim as to Plaintiffs’ Ashley Madison trademark. The Global Personals Action also  
27 involves distinct a factual scenario involving different defendants and may involve  
28 allegations of direct, as well as, secondary liability. Moreover, the plaintiffs in the

1 Global Personals Action recently filed a Motion for Leave to file a First Amended  
2 Complaint to assert additional claims and join another Avid-related as a plaintiff and  
3 another infringer as a defendant.

4 Despite Defendants' contentions to the contrary, the cases do not call for the  
5 determination of the same or substantially related or similar questions of law or fact  
6 beyond those that naturally result from the same trademark being at issue in litigation.  
7 Thus, the actions are not related.

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10 K&L GATES LLP  
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12 Dated: April 29, 2013 By: /s/  
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